

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

FELTON LOVE, JR.,

Plaintiff,

v.

JEFF MACOMBER, et al.,

Defendants.

No. 2:23-cv-00790-DJC-EFB (PC)

ORDER

Plaintiff, a state prisoner proceeding pro se, has filed this civil rights action seeking relief under 42 U.S.C. § 1983. The matter was referred to a United States Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 302.

On May 25, 2023, the Magistrate Judge filed findings and recommendations herein which were served on Plaintiff and which contained notice to Plaintiff that any objections to the findings and recommendations were to be filed within fourteen days. Plaintiff has filed objections to the findings and recommendations.¹ In his objections, Plaintiff argues that the judgement that forms the basis for application of res judicata has been appealed, and thus is not final. However, the "established rule

¹ Plaintiff also filed an interlocutory appeal with the Ninth Circuit. ECF No. 21. The appellate court dismissed the appeal for lack of jurisdiction and issued its mandate. ECF Nos. 24 & 25.

1 in the federal courts is that a final judgment retains all of its res judicata consequences
2 pending decision of the appeal." *Tripati v. Henman*, 857 F.2d 1366, 1367 (9th Cir.
3 1988) (quoting 18 C. Wright, A. Miller & E. Cooper, *Federal Practice and Procedure*
4 § 4433, at 308 (1981).) And in any event, the Ninth Circuit has now dismissed that
5 appeal for failure to prosecute. See Order, *Love v. Hill*, Case No. 23-15312 (9th Cir.
6 June 14, 2023).

7 In accordance with the provisions of 28 U.S.C. § 636(b)(1)(C) and Local Rule
8 304, this Court has conducted a *de novo* review of this case. Having carefully
9 reviewed the entire file, the Court finds the findings and recommendations to be
10 supported by the record and by proper analysis.

11 Accordingly, IT IS HEREBY ORDERED that:

- 12 1. The findings and recommendations filed May 25, 2023, are adopted in full;
13 2. Plaintiff's individual capacity claims against CDCR Secretary Jeff Macomber
14 and Folsom State Prison Warden Tracy Johnson are dismissed for failure to state a
15 claim, with leave to amend within 30 days from the date of this order;² and
16 3. All other claims are dismissed, with prejudice, as barred by res judicata.

17 IT IS SO ORDERED.
18

19 Dated: September 3, 2023


Hon. Daniel J. Calabretta
UNITED STATES DISTRICT JUDGE

27 _____
28 ² Failure to file an amended complaint within the time provided may result in
the dismissal of this action, with prejudice.